IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7848 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIRECTOR STATE RURAL DEVELOPMENT AND
PANCHAYATI RAJBHAVAN

Versus

NARMADABEN KESHAVLAL SOLANKI

Appearance:
1. Special Civil Application No. 7848 of 2001
MR RV DESAI, AGP for Petitioner No. 1
RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/12/2001

ORAL JUDGEMENT

In this petition purporting to be one under Articles 226 and 227 of the Constitution, the Director of State Rural Development and Panchayati Rajbhavan at Junagadh has challenged the judgment and award dated 13.3.2001 passed by the Labour Court, Junagadh in

Reference (LCJ) No. 1116 of 1990 whereby the Labour Court declared as illegal the action of the petitioner in bringing an end to the respondent's services and also directing the petitioner to reinstate the respondent to the original post with continuity of service and with full backwages.

2. The respondent was employed by the petitioner for doing miscellaneous work like cleaning utensils from 1.5.1987. On the ground that the respondent was not discharging her duties satisfactorily and was remaining unauthorisedly absent, the services of the respondent were not continued after 16.11.1987. When the respondent challenged the same by raising an industrial dispute, the petitioner contended in the written statement before the Labour Court (reference to which is made in para 5 of the judgment of the Labour Court at internal page 4) that the petitioner was not carrying on any industry within the meaning of the Industrial Disputes Act, 1947 (`the Act' for brevity) and, therefore, the Act was not applicable. However, the Labour Court did not give any finding on the said issue and held that part-time or causal workmen were also workmen within the meaning of Section 2-S of the Act. The Labour Court then held that the provisions of Section 25F were not complied with. As regards the number of days on which the respondent had worked, the Labour Court held that in view of the absence of any muster roll and salary register, the respondent-workman's case that she was employed from June, 1986 to November 1987 was required to be accepted. On that basis, the Labour Court held that there was violation of provisions of Section 25F of the Act and, therefore, the termination was illegal. The Labour Court awarded reinstatement with continuity of service and with full backwages.

It is the aforesaid award which is under challenge in the present petition.

3. Mr RV Desai, learned AGP for the petitioner has submitted that the petitioner has specifically raised the contention in the written statement that the petitioner was not carrying on any industry within the meaning of the Act. However, the respondent did not show that the petitioner was carrying on any industry. The learned AGP has pointed out that the petitioner is running an office which is a part of the panchayat department of the State Government. The learned AGP has placed heavy reliance on the decision of the Apex Court in State of Gujarat vs Pratamsingh Narsinh Parmar, JT 2001(3) SC 326.

4. None appears for the respondent, though served on

16.10.2001.

5. Having heard the learned AGP, it appears to the Court that there is considerable substance in the submission made by the learned AGP that when the petitioner is running an office which is a part of the Government department, it was for the respondent to plead and show that the petitioner was carrying on any industry within the meaning of the Industrial Disputes Act. Inspite of the specific defence raised by the petitioner in its written statement before the Labour Court that the petitioner is not carrying on any industry within the meaning of the Act, the Labour Court did not give any finding on the said contention and simply proceeded on the basis as if the petitioner is carrying on an industry within the meaning of the Act. In State of Gujarat vs Pratamsingh Narsinh Parmar, JT 2001(3) SC 326, the Apex Court has laid down the following principle :-

"5. If a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes `an industry'. Ordinarily, a Department of the Government cannot be held to be an industry and rather it is a part of the sovereign function. To find out whether the respondent in the writ petition had made any assertion that with regard to the duty which he was discharging and with regard to the activities of the organization where he had been recruited, we find that there has not been an iota of assertion to that effect though, no doubt, it has been contended that the order of dismissal is vitiated for non-compliance of Section 25-F of the Act. The State in its counter affidavit, on the other hand, refuted the assertion of the respondent in the writ petition and took the positive stand that the Forest Department cannot beheld to be an industry so that the provisions of Section 25-F of the Act cannot have any application. In the absence of any assertion by the petitioner in the writ petition indicating the nature of duty discharged by the petitioner as well as the job of the establishment where he had been recruited, the High Court wholly erred in law in applying the principles enunciated in the judgment of this Court in Jagannath Maruti Kondhare (JT 1995 (9) SC 465) to hold that the

Forest Department could be held to be `an industry'."

In view of the aforesaid principle, it is clear that it was for the respondent to plead and show that the petitioner was carrying on an industry within the meaning of the Act and it was not for the petitioner to prove the otherwise. The respondent did not do so.

6. In this view of the matter, the petition deserves to be allowed. The petition is accordingly allowed. The impugned judgment and award dated 13.3.2001 passed by the Labour Court, Junagadh in Reference (LCJ) No. 1116 of 1990 is hereby quashed and set aside.

7. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)
sundar/-